IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8831 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH R DATANIA

Versus

STATE BANK OF BIKANER & JAIPUR

Appearance:

1. Special Civil Application No. 8831 of 2001

MS SM AHUJA for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1,3

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.S.GARG

Date of decision: 15/04/2005

ORAL JUDGEMENT

The petitioner who had worked with the Bank for

about 80 days somewhere in the year 1983 is before this Court challenging the correctness, validity and propriety of order dated 07.05.2001 passed by the State Bank of Bikaner & Jaipur rejecting the petitioner's representation and his case for absorption and appointment, is before this Court.

2. The facts necessary for disposal of the present writ petition are that the petitioner and number of others had worked with different Banks on temporary basis and were thereafter removed, it was thought prudent by the establishment-Bank that for one time settlement such persons who had completed 90 days of temporary service be re-employed or absorbed in services on permanent basis. It appears that certain persons went to the Industrial Court and could secure order in their favour. The challenge to the said order went upto the Supreme Court, but the Supreme Court ordered that in view of continuous services offered by the said workmen-employees it would not be prudent to remove them or hearing the matter on merits, but it would be advisable to effect the said order in favour of those employees only.

3. The present petitioner who had worked for about 80 days with the Bank for the period from 12.10.1983 to 30.12.1983 on temporary basis approached this Court with a submission that his case is not being considered, therefore, the Bank be directed to employ him or in any case consider his case for his absorption in permanent employment of the Bank, and to treat him as a permanent employee with the consequential benefits.

4. The learned Single Judge by his judgement dated 09.03.2001 in Special Civil Application No.727 of 1993 disposed of the writ application with certain observations and directions. It was observed by the High Court that if the bank was to give one time settlement to the employee for being considered for employment in the Bank and if the management gave appointment for 80 days it would not appeal to the reason that minimum number of days should be prescribed as 90 days. This Court also observed that the respondent Bank should be directed to consider the case of the petitioner in light of the observations made in the said judgement. The High Court also directed that the respondent Bank shall consider the said writ application as a representation of the petitioner and, in view of the observations made in the said judgement and order it shall consider the case of the petitioner for re-employment. The relief of back wages was refused and lastly in para 8 of the judgement it was directed that it will be open for the respondent

to consider the case of the petitioner for a suitable post for which the qualifications of the petitioner suits. Immediately after the said judgement the petitioner made a representation to the respondents. After receiving the said representation by letter dated 13.04.2001 (Annexure 'D') the Bank recorded certain tentative findings and required the petitioner to show cause against the said tentative findings wherein the Bank had recorded its opinion that the petitioner cannot be appointed as a fresh appointee. It appears that the petitioner thereafter submitted his show cause and after taking the same into consideration the respondent Bank by its order dated 07.05.2001 contained in Annexure 'E' rejected the representation of the petitioner observing that the petitioner's case for fresh appointment cannot be considered.

5. The petitioner being aggrieved by the said letter dated 07.05.2001 is again before this Court.

6. Ms.Ahuja, learned counsel for the petitioner submitted that the tenor and texture of order dated 07.05.2001 would clearly show that obsessed with the authority the respondent-Chief Manager is trying to ignore the mandatory directions of this Court by reading certain observations out of context. According to her if the case of the petitioner is to be considered in view of the policy of one time settlement, the case of the petitioner could not be rejected only on the ground that his case is to be considered for suitable post for which qualification of the petitioner suits. She submits that if this Court has already issued a direction that the Bank was not justified in fixing minimum working days as 90 the case of the petitioner ought to have been considered in light of the directions issued by this Court.

7. Mr.Desai, learned counsel for the respondent on the other hand submitted that the true spirit of the judgement is to be appreciated in view of the directions issued by this Court. According to him the Bank was not unjustified in considering the case of the petitioner especially when the case of the petitioner was to be considered afresh in light of the directions issued by this Court.

8. From the judgment delivered in Special Civil Application No.727 of 1993 this Court observed,

> ".. .. Mr.Clerk, learned advocate for the petitioner is right if the bank is to give

> one time opportunity to the employee for being considered for employment in the Bank and if the management is giving appointment for 80 days, it does not appeal to the reason that the minimum number of days should have been prescribed to be 90."

From these observations it would clearly appear that the High Court was of the considered opinion that the management in giving appointment of 80 days was absolutely unjustified in fixing minimum working days as 90.

9. From order dated 07.05.2001 it would appear that the Chief Manager was observing that the period of minimum service for one time opportunity of 90 days was fixed by the Government of India and not the Bank and it was uniform for all other Banks. These observations made by the Chief Manager run contrary to the judgement of this Court. Once the High Court observed that it would not appeal to the reason that on face of 80 days appointment, 90 days minimum services are needed, then the Bank is obliged to consider the case of a person who has worked less than 90 days.

10. Chief Manager has further observed that the petitioner had worked for 80 days only, therefore, he would not be eligible for his one time settlement/ appointment/ absorption.

11. I fail to understand the propriety of these observations. It was all through undisputed that the petitioner worked for 80 days only. It was undisputed that the Bank has fixed minimum working days of 90 for one time settlement. If the High Court has observed that 90 days could not be fixed as minimum working days the question of working days of 90 or 80 would lose its importance. It is further to be seen that the Chief Manager was trying to read certain observations made in para 8 of the judgement out of context. Para 8 in fact is to be read in juxtaposition and conjunction with earlier paras of the judgement and as summary of what was earlier discussed. Para 8 says that it will be open for the respondent to consider the case of the petitioner for suitable post for which qualifications of the petitioner suits. If these abbreviations made by the High Court are to be read without reference to the context or in the air, then they would not carry any meaning. These observations in fact are to be read to mean that the case of the petitioner will have to be considered for his absorption irrespective of the days for which he worked

and the Bank while absorbing him would provide him a suitable post. The manner in which the observations have been read shows absolute non application of mind on the part of the Chief Manager. I must say that while passing order dated 07.05.2001 the Chief Manager was crossing the limits available to him and was perilously bordering contempt of lawful authority of this Court. Let this Court remind him that the orders of this Court are not to be fiddled with. No person howsoever high he is, would be too small before a Court of law, he is bound and obliged by the directions issued by the Court, be it a court of Civil Judge, District Judge or High Court. In our system none is allowed to ignore orders passed and issued by a competent court of law. In the present dispute earlier judgement dated 09.03.2001 delivered in Special Civil Application No.727 of 1993 has attained finality between the parties. If that be so the judgement will have to be observed in its true spirit.

12. Order dated 07.05.2001 and the notice to show cause dated 13.04.2001 are bad on fact and in law, they deserve to be and are accordingly quashed. The respondent Bank is hereby directed to reconsider the case of the present petitioner in light of the observations made by this Court in this order and the earlier order and pass an order in accordance with law. It is also made clear for the understanding of the Chief Manager/ competent authority of the respondent-Bank that the whole of the petition earlier filed is to be treated as a representation and the simple representation later on made is not only to be disposed of. The respondent Bank shall pass speaking orders after giving due opportunity of hearing to the petitioner within 20 (twenty) days from the date of submission of a copy of this judgement. The petition is allowed. Rule is made absolute. No order as to costs. Direct service is allowed.

(R.S. Garg, J.)

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